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CONTENTS



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# The Anti-War Pact[1]

WHEN the United States Senate meets in December it will be requested by President Coolidge to ratify the Kellogg Treaty for the Renunciation of War. The consideration of this treaty by the Senate will be followed with extraordinary interest not only in the United States but throughout the entire world. Remembering the rejection of the Treaty of Versailles and the reservations to the World Court Protocol, Great Britain and France and possibly other signatories are apparently awaiting the action of the United States Senate before ratifying the Kellogg pact.

The signing of the anti-war pact has been proclaimed as one of the most important events in history and undoubtedly it has had a profound influence upon public opinion throughout the world. The purpose of this report is to estimate its possible effects upon international relations as a whole. It reviews briefly the history of the anti-war movement and the events leading up to the signing of the pact and also analyzes the terms of the document, as well as the "interpretative notes" which were accepted in place of reservations and amendments. It attempts further to show what wars are actually prohibited by the pact, the relationship between the pact and the causes of war, and finally it attempts to estimate its moral and psychological importance.

On August 27, 1928 representatives of fifteen States met in Paris in the Salle de l'Horloge at the Quai d'Orsay—the room in which the League of Nations was born about nine years before. Here was signed a treaty providing for the renunciation of war as an instrument of national policy. No speeches were made at the ceremony except by M. Briand, the French Foreign Minister. He spoke of the treaty as a great and important event. He also praised Mr. Woodrow Wilson and the League of Nations along with the anti-war treaty. He declared that it was still necessary to "organize" the peace. Mr. Kellogg, who along with M. Briand initiated the pact and carried the negotiations to a successful conclusion, was

1. The official title of the treaty is, *The General Treaty For The Renunciation of War.* It will be referred to in this report as the anti-war pact.

present at the ceremony—the first American Secretary of State officially to visit Europe in many years. Germany was represented by Dr. Stresemann, the Minister of Foreign Affairs, and this was the first occasion upon which a German Foreign Affairs Minister had officially visited Paris since before the War of 1870. Sir Austen Chamberlain, the British Foreign Secretary, was not present because of ill-health but his place was taken by Lord Cushendun.

## THE ANTI-WAR MOVEMENT

Until the establishment of the League of Nations in 1920, war was usually regarded as a legitimate "instrument of national policy."[2]

For many years, however, dissatisfaction with war as a method of settling disputes has been expressed. Perhaps the first attempt, at least in modern times, to renounce war was made by the Revolutionary Government of France. On May 22, 1790 the Constituent Assembly of the French Revolution passed the following resolution: "The French nation renounces the right to undertake any war with a view of conquest and will never employ its forces against the liberty of any people." Within five years, however, France was at war with half a dozen powers. The fact that this effort failed in 1790 does not mean, however, that it will fail in 1928. Two centuries ago no international conscience against the instrumentality of war existed, as it does today. At that time there was no international machinery working to eliminate the causes of war.

### THE COVENANT OF THE LEAGUE

A vigorous peace movement came into existence before 1914, and new impetus to the movement arose as a result of the moral and material destruction of the World War. Largely as a result of this movement, the League of Nations came into existence.

The purpose of the League, according to the preamble of the Covenant is "to promote international cooperation and to achieve international peace and security by the acceptance of obligations not to resort to war. . . " Members agree to place all disputes not submitted to arbitration before the League Council, and promise not to go to war in any case until three months after the Council reports and in the event that the report is unanimous and is accepted by one party, they agree not to go to war at all.[3] Certain private wars, however, remain "legal"—in the case of disputes over domestic questions, or a report of the Council which is not unanimous, or a report which is unanimous but which is accepted by neither party to the dispute. This constitutes the "gap" in the Covenant.

Finally, the Covenant provided for a system of sanctions. European experience had proved that promises were not always kept. Germany had promised in a treaty of 1839 to respect the neutrality of Belgium, but had violated that treaty in 1914. The great States might maintain armies and navies to protect themselves against such violations. But the small States could not do so. Large armaments in themselves constituted an international irritant. In order to give a feeling of security to great and small States alike and in order to make the reduction of armaments possible, the Covenant provided for a system of international sanctions. Article 16 provided that in case any Member went to war in disregard of its covenants, all other Members of the League undertook immediately to subject it to an economic and financial boycott. The Council should also recommend what effective military force the Members should apply.

Between 1920 and 1928 two divergent points of view were expressed by League Members. The first wished to cut down the importance of the sanctions, which some States declared were too severe. As a result of their influence, the Second Assembly adopted a resolution to the effect that each Member should decide for itself in a given case whether the Covenant had been violated and, if so, what measures it should adopt. An obligation to apply sanctions existed but apparently each Member determined when

2. In his famous book, *Vom Krieg*, General Karl von Clausewitz, declared that *Der Krieg ist ein instrument der politik.* p. 351.

3. Articles 12-15 of the Covenant.

these obligations came into existence. Secondly, other States, led by France and her allies, sought to have the League fill in the "gap in the Covenant." They declared that they could not disarm so long as they could not count upon collective support in case of attack. To find security which was lacking in the Covenant, France and a number of other continental States entered into "defensive" alliances, the sanctions of which will come into play only after the pacific procedure of the League is exhausted.[4]

### THE GENEVA PROTOCOL AND LOCARNO

The demand to fill in the "gap of the Covenant" found a wider expression in the famous Geneva Protocol, drawn up at the 1924 Assembly. The preamble of this Protocol declared that "war of aggression" was an "international crime." The Protocol provided in detail for the pacific settlement of nearly every kind of international dispute. The States accepting the Protocol agreed "in no case to resort to war" except to resist aggression or to apply sanctions against a State illegally going to war. Finally, the Protocol attempted to strengthen the indefinite sanctions of the Covenant by giving the Council the right to determine for the parties when sanctions should be applied. Once the procedure of pacific settlement and of sanctions was strengthened, the reason for large military establishments would come to an end. Consequently the Geneva Protocol provided that the ratification of the Protocol should be followed by a conference on disarmament.

The British Government took the lead in rejecting the Protocol. Nevertheless, virtually the same obligations in the way of pacific settlement and of sanctions, restricted to the Rhineland area, were taken in the Locarno agreements.[5] In the Treaty of Mutual Guarantee, Germany, Belgium, France, Great Britain and Italy, "collectively and severally guarantee . . . the maintenance of the territorial *status quo*" in the Rhineland. Germany and Belgium and also Germany and France agree "in no case to attack or invade each other or resort to war against each other."[6] If the League Council is satisfied that this pledge is violated, the parties to the Locarno pact agree that "they will each of them come immediately to the assistance of the Power against whom the act complained of is directed." In case of a flagrant breach, each party "hereby undertakes immediately to come to the help of the party against whom such a violation or breach has been directed as soon as the said Power has been able to satisfy itself that this violation constitutes an unprovoked act of aggression," and that immediate action is necessary. Nevertheless, the League Council will later pass upon the question and the parties agree to act in accordance with its recommendations provided the Council is unanimous except for the parties to the dispute.

The Guarantee Treaty was followed by a series of arbitration and conciliation agreements between Germany and her neighbors. These provide for the reference of "all disputes of every kind" with regard to "which the parties are in conflict as to their respective rights" either to an arbitral tribunal or to the Permanent Court of International Justice. Before resorting to the latter Court the parties may refer the dispute to a Permanent Conciliation Commission of five members, three of whom are neutral. All questions which do not fall within the scope of arbitration shall be submitted to the Commission; and if the parties do not accept

4. These were as follows:
   1. Military Agreement with Belgium, September 1920.
   2. Alliance with Poland, February 1921.
   3. Alliance with Czechoslovakia, January 1924.
   4. Alliance with Rumania, June 1926.
   5. Alliance with Jugoslavia, November 1927.

   In the Treaty of June 10, 1926, France and Rumania "reciprocally agree not to engage against each other in any attack or invasion and not to resort in any case to war against each other," subject to the exercise of the right of self-defense, obligations under Article 16 of the Covenant, and action undertaken by reason of a decision of the Assembly or the Council.

   Both States promise to settle by pacific means "all questions, of whatever nature they may be" which may arise between them.

   If, notwithstanding their sincerely pacific intentions, France or Rumania are attacked without provocation on their part, the two governments will concert without delay as to their respective action, to be exercised within the framework of the League of Nations, with a view to the safeguarding of their legitimate national interests and to maintaining the order established by the treaties which they have signed.

5. Five agreements were initialed at Locarno, October 16, 1925, as follows:
   1. Treaty of Mutual Guarantee between Germany, Belgium, France, Great Britain and Italy.
   2. Arbitration Convention between Germany and Belgium.
   3. Arbitration Convention between Germany and France.
   4. Arbitration Treaty between Germany and Poland.
   5. Arbitration Treaty between Germany and Czechslovakia.

   France and Czechoslovakia also concluded draft agreements providing for mutual aid in case of attack.

6. This pledge is more precise than "the renunciation of war as an instrument of national policy," used in the anti-war pact. The stipulation does not apply, however, in the case of (1) the exercise of the right of legitimate defense, which includes resistance to a flagrant breach of Articles 42 or 43 of the Treaty of Versailles (cf. p. 369), (2) action under Article 16 of the Covenant, (3) action as the result of a decision taken by the Assembly or by the Council of the League, etc.

the findings of the Commission the question shall, at the request of either party, be referred to the Council of the League which shall handle it in accordance with Article 15 of the Covenant.

Such was the situation in 1927. The League Covenant had made a large number of wars illegal upon nearly a world-wide scale. The League Covenant provided a rather vague system of sanctions in favor of all Members of the League. The Locarno pact made war in the Rhineland illegal and provided concrete sanctions for a limited area. Both agreements set up interrelated machinery for the pacific settlement of disputes.

While the United States did not participate in any of these efforts to make war illegal, a movement having the same objectives arose in America, called the "outlawry of war" movement. Joining forces with the pacifists who were opposed to the use of any force, leaders of the "outlawry of war" movement, such as S. O. Levinson, Charles C. Morrison and Senator Borah, proposed to make war a "public crime under the law of nations," except in the case of actual invasion. An international court should have full power to decide all international controversies except over domestic questions, according to a code of international law approved by popular plebiscite. The plan differed from the League movement by the all-inclusive jurisdiction vested in an international court and by the absence of any international military sanctions. The slogan of this movement, "outlawry of war," took hold of popular imagination in the United States. The issue was taken up by a large number of organizations, such as the Federal Council of Churches, the League of Women Voters, and the National Council for the Prevention of War, as well as by a number of independent individuals.

While in one sense the anti-war pact was an outgrowth of the "outlawry of war" movement in the United States, the anti-war pact did not, as will be seen, go as far as the outlawry program. It did not "outlaw" war —a term which implies the establishment of international machinery to act as a legal substitute for war; it merely renounced war as an instrument of national policy. It still permits the use of military sanctions and provides no machinery for the obligatory arbitration of disputes.

Apparently it was the "outlawry of war" slogan which influenced the League Assembly in 1927 to adopt a resolution prohibiting all "wars of aggression," and the Pan American Conference at Havana in 1928 to adopt a resolution banishing all "aggression" from the American continent.[7]

## THE ANTI-WAR NEGOTIATIONS

The anti-war pact became an issue in international politics as a result of the initiative, not of the American, but of the French Government. Upon the tenth anniversary of the entrance of the United States into the World War, April 6, 1927, M. Briand issued[8] a statement to the Associated Press suggesting that France would be willing to make a treaty with the United States "tending to 'outlaw war.' . . . The renunciation of war as an instrument of national policy is a conception already familiar to the signatories of the Covenant of the League of Nations and of the Treaties of Locarno. Every engagement entered into in this spirit by the United States toward another nation, such as France, would contribute greatly in the eyes of the world to broaden and strengthen the foundations on which the international policy of peace is being erected. . . ." The French suggestion received little attention from the American public until Dr. Nicholas Murray Butler, President of Columbia University, emphasized its importance in a letter of April 25 to the New York *Times*. Various organizations thereupon took the matter up and urged the State Department to consummate an agreement. On June 20 the French Government presented a draft treaty to the State Department providing that the French and American peoples "renounce" war as an "instrument of their na-

8. At the suggestion, it is understood, of Prof. James T. Shotwell of Columbia. For the statement cf. *International Arbitration and Plans for an American Locarno.* F. P. A. *Information Service,* Vol. III, No. 7, p. 87.

7. For the text of these resolutions cf. *League of Nations and Outlawry of War,* F. P. A. *Information Service,* Vol. III, No. 25, p. 399; and *The Sixth Pan American Conference, Part I,* Vol. IV, No. 4, p. 78.

tional policy toward each other." The Department did not, however, answer the Briand proposal for six months.[9] On December 28, 1927, Secretary Kellogg finally replied to M. Briand, welcoming his suggestion. He expressed the wish, however, that all the principal powers sign the proposed declaration—namely the American, British, German, French, Italian and Japanese Governments. The other nations might later subscribe to this declaration.[10]

### THE FRENCH SUGGESTIONS

The French stated that this proposal which would convert a bilateral into a multilateral treaty affected the nature of the original suggestion. In case of a multilateral treaty, France would be obliged to confine the renunciation to "all wars of aggression"; otherwise the renunciation of all war might prohibit France from carrying out her obligations under the Covenant, the Locarno agreements, and conventions guaranteeing neutrality—apparently a reference to the French alliances.[11] France could make a treaty renouncing all war with the United States because the possibility of applying the sanctions of her alliances and the Covenant against the United States was only theoretical, but a multilateral treaty, involving States with which France had been involved in wars in the past, presented new considerations. France did not wish to sign any agreement which would weaken the sanctions of the League. The United States, in reply, declared that it could hardly be presumed that League Members could "do separately something they cannot do together." Moreover, any attempt to define "aggressor" and any exceptions or qualifications stipulating when nations would be justified in going to war would virtually destroy the positive value of the treaty as a guarantee of peace. "The ideal which inspires the effort so sincerely and so hopefully put forward by your Government and mine is arresting and appealing just because of its purity and simplicity; and I cannot avoid the feeling that if governments should publicly acknowledge that they can only deal with this ideal in a technical spirit and must insist upon the adoption of reservations impairing, if not utterly destroying, the true significance of their common endeavors, they would be in effect only recording their impotence, to the keen disappointment of mankind in general."[12]

In a note of March 30, France developed her attitude still further. She dropped the phrase "war of aggression" but declared that in case one State violated its promises to renounce war, the other signatories should be released from their obligations with reference to that State; that the pact should not deprive States of the right of "legitimate defense"—*défense légitime* seems to be the French equivalent of self-defense; and that it should not prejudice obligations contracted under the Covenant, the Locarno agreements and treaties guaranteeing "neutrality." Moreover, an anti-war treaty in principle should go into effect only after receiving universal acceptance.

On April 13, 1928 the United States sent a note to the British, German, Italian and Japanese Foreign Offices, transmitting a draft treaty couched in practically the same language used in the original Briand proposal. A week later the French Government submitted to the same governments a draft embodying the exceptions it deemed desirable. Article I of the French draft was as follows:

> "The high contracting parties without any intention to infringe upon the exercise of their rights of legitimate self-defense within the framework of existing treaties, particularly when the violation of certain of the provisions of such

9. In November 1927, President Coolidge ventured the opinion that an outlawry of war treaty might be unconstitutional (New York *Times*, November 26, 1927). In reply it has been stated that while Congress has the power to declare war, the treaty-making power may impose limitations, from the standpoint of international law, upon its exercise. Congress has the power to establish a uniform rule of naturalization, but this has not prevented the treaty-making power from entering into about thirty treaties in regard to naturalization and nationality. Congress has the power to grant Letters of Marque and Reprisal, but a treaty of August 31, 1887 between the United States and Peru prohibits (Article 26) the issuance of letters of marque. Malloy, *Treaties of the United States*, p. 1438.

This same constitutional question was discussed at the Paris Peace Conference. Cf. David Hunter Miller, *The Drafting of the Covenant*, Vol. I, p. 26.

10. This correspondence is not summarized in greater detail because it has been published in full by the State Department in "Notes Exchanged Between the United States and Other Powers on the Subject of a Multilateral Treaty for the Renunciation of War." The Foreign Policy Association is sending a copy of this publication to each subscriber to the *Information Service*.

11. Note of January 21, 1928. These alliances are not, however, mentioned in the correspondence.

12. Note of February 27, 1928. In an address to the Council on Foreign Relations, March 15, 1928, Mr. Kellogg with approval quoted a statement of the British Secretary of State for Foreign Affairs to the Sub-Committee on Security: "I therefore remain opposed to this attempt to define the aggressor because I believe that it will be a trap for the innocent and a sign-post for the guilty." This is a quotation from Sir Austen Chamberlain's speech to the House of Commons, November 27, 1927. *Committee on Arbitration and Security*. C. A. S. 10, p. 57.

treaties constitutes a hostile act,[13] solemnly declare that they condemn recourse to war and renounce it as an instrument of national policy; that is to say, as an instrument of individual, spontaneous and independent political action taken on their own initiative and not action in respect of which they might become involved through the obligation of a treaty such as the Covenant of the League of Nations. They undertake on these conditions not to attack or invade one another."

Article 3 provided that in case one party violated the treaty, the other parties would be released with respect to that party from their obligations. Article 4 provided that the treaty should in no wise affect rights and obligations resulting from prior international agreements.

On April 27 the German Government accepted the American draft. In its opinion, the pact did not violate either the Covenant or the Locarno agreements, nor could it affect the sovereign right of self-defense. It was self-evident, according to the German Government, that if one State violated the pact the other States regained their freedom with reference to that State.

### SECRETARY KELLOGG'S ADDRESS

On the following day, Mr. Kellogg made an address to the American Society of International Law at Washington. He declared that the right of self-defense could not be restricted by any treaty; and that the obligations under the Locarno agreements and the French "neutrality" treaties would become operative only after that party had gone to war in violation of its pledges. In case such a State was also party to the anti-war pact, the other parties would then be free to proceed against it. The United States was willing that the parties to the Locarno pact and the French treaties of neutrality should sign the anti-war pact. Mr. Kellogg declared that the League Covenant "authorized war in certain circumstances" but "it is an authorization and not a positive requirement." In view of these considerations, it was unnecessary to make any changes in the draft of the treaty. He did not believe that the application of this treaty should turn upon its universal acceptance since an unimportant State might obstruct the wishes of the great majority.

This address, in which Mr. Kellogg accepted the substance of most of the French reservations while declining to incorporate them in the treaty, perceptibly changed the attitude of Europe toward the American proposal. Nevertheless, French opinion for a time was troubled by Mr. Kellogg's declaration that there was no positive obligation under the Covenant to go to war. This interpretation of the Covenant was challenged by the French and many other commentators, who held that while each State determined for itself the extent of the obligation to apply sanctions it could not deny the existence of these obligations.[14]

The French and other governments soon dismissed any misgivings on this point, however, taking the position that the Covenant of the League could be validly interpreted, not by the American Secretary of State, but by representatives of the League. In England, opinion was quick to attach practical importance to the pact. Many declared that the acceptance of obligations by the United States which the States of Europe had already accepted, if in a different form,[14a] might mean a new attitude on the part of the United States toward the League. On May 15 the House of Lords unanimously passed a resolution in favor of the pact.

### THE BRITISH NOTE

On May 19 the British Government replied to the American invitation. While the British note agreed with the American position that the right of self-defense was inalienable, it expressed sympathy with the proposed French amendment to the effect that if one party violated the treaty, the other parties should regain their freedom with respect to that party. But in view of Mr. Kellogg's speech the British Government would not ask for the insertion of an amendment to this effect. It declared: "means can no doubt be found without difficulty of placing this understanding on record in some appropriate manner so that it may have equal value with the terms of the treaty

13. Apparently a reference to Article 44, Treaty of Versailles, cf. p. 369.

14. Cf. p. 358.

14a. However, the resolution of the 1927 Assembly condemning "aggressive war" does not seem to have the same legal weight as a multilateral treaty to this same general effect.

itself."[15] Moreover, respect for the obligations arising out of the Covenant and the Locarno treaties was "fundamental." The British Government, therefore, favored some such provision as was embodied in Article 4 of the French draft recognizing these obligations. It also declared:

> "10. The language of Article 1, as to the renunciation of war as an instrument of national policy, renders it desirable that I should remind your excellency that there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defence. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. . . . "

This has been popularly called the British Monroe Doctrine.

### THE "BRITISH MONROE DOCTRINE"

Unlike the Monroe Doctrine of the United States there are no geographic limits to the British doctrine as thus announced. And its concrete application has given rise to much speculation. Apparently the British Government wishes to state expressly its right to defend from attack or other forms of interference territories where British sovereignty is uncertain such as the Anglo-Egyptian Sudan, mandates held under the League of Nations, particularly Iraq and Palestine, and other areas where British influence has been great, such as Egypt and certain parts of the Red Sea, the Gulf of Aden and the Persian Gulf. If Egypt is a party to the pact and is attacked, Great Britain will be free to go to Egypt's assistance. In Arabia, however, there are a number of potentates such as the King of the Hedjaz who, while independent, have not been admitted to the Family of Nations.[15a] Nevertheless an attack against these areas would at once involve British communications. If State A should attack Ibn Saoud, it would not violate the anti-war pact since Ibn Saoud is not a party and does not therefore enjoy its protection. Without an understanding to the contrary, Great Britain would, however, be bound by the treaty not to attack State A.

What the British Government apparently fears also is interference in these areas falling short of actual war. If Afghanistan should, for example, allow Russia to build military roads and fortifications aimed at the Indian frontier, or to mass troops in Afghanistan, the British Empire would feel that the security of India was menaced.[15b]

The note ended by declaring that on receipt of an invitation to participate in the conclusion of the anti-war treaty, the governments of the Dominions and of India would accept such an invitation. On May 22 the United States extended this invitation, which was accepted.[16]

On June 23 the negotiations entered their final stage. On that date the United States sent a note to a total of fourteen States; the British Dominions, Belgium, Poland and Czechoslovakia, in addition to the governments previously involved in the discussions.[17] In this note the American Government transmitted a draft treaty containing a revised preamble giving express recognition to the principle that if a State resorts to war in violation of the pact the other parties are released from their obligations toward that State; *i.e.*, the offender "should be denied the benefits furnished by the treaty." The note also embodied Mr. Kellogg's address to the American Society of International Law, thus placing his construction of the treaty in the official correspondence. The United States expressed the "fervent hope" that the governments would accept this draft "without qualification or reservation."

For three weeks no government made a reply. Meanwhile European Foreign Offices communicated with each other to determine

15. Apparently this is a reference to a protocol. See p. 363.

15a. They were not invited to adhere to the pact which led Ibn Saoud, King of the Hedjaz, to protest. New York *Times*, September 12, 1928. An attack against the Anglo-Egyptian Sudan under the condominium of Egypt and England might give rise also to legal difficulties. The preamble is obscure in regard to whether the renunciation is limited to the parties or is absolute. The preamble states, "Any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benets furnished by the treaty." Article I provides, however, that the parties renounce war, etc., "in their relations with one another."

15b. Any action by the British Government in this respect is, however, subordinated to the provisions of the Covenant of the League. Cf. p. 372.

16. The Italian Government accepted the American draft on May 4; the Japanese Government, on May 26.

17. The three latter were parties to the Locarno agreements and the French alliances. They were included to prevent any conflict between these agreements and the anti-war pact. Cf. p. 359.

the actual effect of this last proposal upon existing obligations. M. Berthelot, permanent head of the French Foreign Office, paid a visit to London, while Sir Cecil Hurst, M. Fromageot, and Dr. Gaus, the legal advisers to the British, French and German Foreign Offices, met in Berlin. For a time the French and British Governments considered the desirability of annexing a special protocol to the treaty, containing the interpretations given to the pact to be signed by all parties. Following discussion by the legal advisers, this proposal was abandoned in favor of "interpretative" notes. On July 11 the German Government accepted the pact, agreeing to the Kellogg "interpretation" embodied in the note of June 23. On July 14 M. Briand accepted the revised preamble and the Kellogg interpretations, which he stated made the treaty "compatible" with French obligations. Meanwhile, the British Government delayed making a reply. On July 7 Sir Austen Chamberlain declared in the House of Commons that it was important when undertaking new engagements not to break old ones. On July 18 the British Government accepted the revised Kellogg draft, subject to interpretations previously made. The other government made similar replies.

On August 4 the British Government transmitted to the League of Nations Secretariat copies of the notes setting forth the British interpretation of the Kellogg pact. In a covering letter it was declared: "in examining these proposals the British Government has been very anxious, in view of the provisions of Clause 20 of the League Covenant, to ascertain whether there exists any incompatibility between their acceptance and the obligations resulting from the Covenant. As appears from the enclosed Notes the Government has acquired the conviction that its signature of the proposed treaty would not be in opposition to its obligations resulting from its position as a member of the League. As the question is evidently one which in a general way interests all members of the League I ask you to be so kind as to communicate to them a copy of the enclosed notes."[18-19] The Secretariat has already published and transmitted this correspondence to every Member State, which thus will be made officially cognizant of the British interpretations.

## THE SIGNING OF THE PACT

On August 27, 1928 the anti-war treaty was signed in Paris. The deposit of ratifications, however, was arranged to be made in Washington, thus dividing the honors of the treaty between France and the United States. The treaty goes into effect only after ratification by all fifteen signatories.

On August 28 the United States extended an invitation to forty-eight governments to adhere to the pact. Russia was not included in this list since the Soviet Government has not been recognized by the United States. Russia, however, was invited by France to adhere. In a note of August 31, 1928 the Soviet Government vigorously criticized the treaty because of its silence in regard to disarmament, because of its indefiniteness, and because of its "reservations." Nevertheless, in view of the fact that it imposed certain obligations upon the powers and because it might lead to disarmament, the Soviet Government was willing to adhere.[20] On September 6 the Soviet Government formally adhered to the pact, and the adherence was deposited in Washington by the French Government on October 4. By November 1, 1928 six States had officially adhered to the pact, thirty-five had signified their intention of adhering, and eight had not replied to the invitation. The latter group consists of six Latin American countries—Argentina, Brazil, Chile, Colombia, Ecuador and Paraguay—Iceland and Afghanistan.[20a]

Following the signature of the pact, Secretary Kellogg left Paris immediately for Dublin and then returned to the United States. Many of the representatives of the other

18-19. Article 20 of the Covenant provides that the Members of the League will not hereafter enter into any engagements inconsistent with the Covenant. The British letter and notes are printed in the *Monthly Summary* of the League of Nations, September 15, 1928, p. 219.

20. Cf. p. 365.

20a. Cf. Appendix for full list.

governments left for Geneva to participate in the meeting of the League Council and of the Assembly. In the opening sessions of the Assembly, a large number of speakers, including M. Politis, Greek Minister in Paris, Hermann Müller, Chancellor of Germany, and Mackenzie King, Prime Minister of Canada, praised the pact in high terms. The representative of Lithuania proposed a resolution stating that since "the acceptance of the pact for the renunciation of war by the Members of the League of Nations goes further than their obligations in this respect contained in the Covenant of the League of Nations and supplements them, thus necessitating changes in the fundamental provisions of the Covenant of the League of Nations . . . . the Council should initiate an enquiry into the amendments which should be introduced into the Covenant of the League of Nations on the above-mentioned lines." The Assembly decided, however, that a discussion of this resolution would be premature since the anti-war pact had not been ratified by the signatory powers, and since delegates were without instructions.[21]

Speaking on the relation between the pact and the League, M. Politis at the Assembly on September 7, declared: "The great merit of the Paris treaty, as compared with the League Covenant, is that it fills the chief gap in the last-named instrument. . . . It realizes a reform which for the last five years we have sought in vain. It lays down as a rule of positive law the essential principle, the fundamental principle of the Geneva Protocol of 1924. . . . The principle of which I speak is the prohibition of what we have always called here wars of aggression."

## WHAT WARS ARE ACTUALLY PROHIBITED?

Article I of the pact states that:

> "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another."

As a result of interpretative notes, the leading parties to the pact have made it clear that this renunciation does not apply to war in the following cases:

1. In self-defense.
2. Against any State which breaks the treaty.
3. In execution of obligations under the League Covenant.
4. In execution of obligations under the Locarno agreements.
5. In execution of obligations under treaties guaranteeing neutrality, which presumably include the French alliances.

Such is the list of wars which the pact does not prohibit. Some critics state that they are so wide as to make the pact of little value. Prof. Edwin M. Borchard has stated, "Considering these reservations, it would be difficult to conceive of any wars that nations have fought within the past century, or are likely to fight in the future, that cannot be accommodated under these exceptions. Far from constituting an outlawry of war, they constitute the most solemn sanction of specific wars that has ever been given to the world."[22]

It may be argued, however, that instead of sanctioning the excepted wars, the anti-war treaty leaves these wars in exactly the same status as they were before the pact was signed—no more and no less legal. The actual range of the above exceptions can be determined only after an analysis of the circumstances under which these exceptions become effective.

### *The Right of Self-Defense.*

While the pacifists have long argued against the use of any force in international relations, no State has agreed to give up the right of self-defense, and it is difficult to conceive of any State so doing. The authors of the "outlawry of war" movement in the United States, did not propose to abolish the right of self-defense.[23]

### *Cooperative Defense*

The sanctions under the Covenant, the Locarno agreement, and the French alliances

21. *Verbatim Record*, Ninth Ordinary Assembly, September 4, 1928.

22. Speech at Williamstown Institute of Politics, August 21, 1928.

23. The preamble of the Borah resolution introduced into the Senate in February 1923 declared that the outlawry plan "would not involve or affect the right of self-defense against invasion or attack, such right being inherent and ineradicable, but should not be a mere subterfuge for the traditional use of war." The Levinson draft declared, "the question of genuine self-defense, with nations as with individuals, is not involved in or affected by this treaty."

seemed to be based upon this same principle of self-defense. The sanctions do not constitute a primary right to go to war. They may be invoked only on behalf of a State which is illegally attacked and which is acting in the name of self-defense. If, for example, the territory of State A is invaded by State B, State A may, subject to the provisions of the Covenant, resist the invading army as an act of self-defense. It may also receive aid from the parties of the Covenant, of Locarno and of the French alliances, provided State A is a party to these agreements. In other words, when force is employed under these agreements it is in the nature of cooperative defense.[24]

President Coolidge has insisted that despite the anti-war pact an adequate army and navy is still necessary for the self-defense of the United States.[25] In other words good faith is not an adequate guarantee.

If it is legitimate for one State to maintain forces to defend itself, is it illegitimate for States jointly to maintain forces for cooperative defense? Without such sanctions it is argued that the reduction of armaments by each State is impossible.[26] Without such sanctions small States, unable to maintain large armaments, may live under the fear of attack by well-armed powers.

*Self-Defense in Private Law.*

While the principle of self-defense and of cooperative defense may be perfectly valid, the application of the principle presents difficulties.

In private law, the conception of self-defense has existed for a long time. In the United States force is justifiable in repelling an assault in proportion to the immediate necessity, but force in excess of necessity is inexcusable. The defender must not become the aggressor. This is a question of fact for the jury to decide.[27]

Under French criminal law self-defense (*défense légitime*) is justified in repelling one who attempts to enter the house of the defender during the night, or in protecting oneself against another who is committing robbery or pillage "with violence."[28] This provision does not define the measure of force which is justifiable. It seems correct to state that, because of the nature of the phrase, self-defense has not been defined in private law but that it exists as a general principle and is applied by the courts to a particular state of facts as they arise.

*Self-Defense and International Law.*

Under international law, the term self-defense has often been given a wider meaning than in private law. And what is of even more importance, each State has decided for itself when the application of the doctrine is justified; there has been no international jury or tribunal to decide the limits of the doctrine.

General von Moltke, Chief of the German General Staff, and the military party in Germany believed in fighting wars of defensive aggression or "preventive wars." The enemy should be attacked before he can attack.[29]

The same view of self-defense was stated by Chancellor von Bethmann-Hollweg before the Reichstag at the outbreak of the World War when he asked, "were we to wait until the Powers between whom we are sandwiched chose their time to strike?"[30] The Reichstag and the German people originally believed that in this contest they were fighting a war of self-defense to forestall the "encirclement" policy of the Allies.

The European system of alliances has been generally regarded as instrumental in causing the World War. Yet these alliances were "defensive" in nature. The preamble to the military convention of 1892 between France and Russia declared that both States had "no other object than to meet the necessities of a defensive war, provoked by an attack of the forces of the Triple Alliance." The Triple Alliance of 1882 between Austria-Hungary, Germany and Italy was declared to have an "essentially conservative and defensive nature." Competition in armaments may likewise be carried on in the name of "self-defense."[31]

24. Cf. the last paragraph of the Canadian note of May 30, 1928.

25. Cf. p. 377.

26. "Le Désarmament", *Le Temps*, August 13, 1928; Jacques Bainville, "Les Conséquences du Pacte Kellogg," *Action Française*, August 6, 1928.

27. *State* v. *Jayson*, 94 N.Y.L. 467; Derby, *Cases On Criminal Law*, p. 367. Cf. *Miller* v. *State*, 139 Wis. 57; *State* v. *Doherty*, 52 Ore. 591.

28. Articles 328, 329, French Penal Code.

29. Bismarck, however, did not support this theory. W. H. Dawson, *The German Empire, 1867-1914*, Vol. II, p. 482.

30. Gooch, G. P. *History of Modern Europe*, p. 553.

31. Cf. p. 378.

### AGGRESSIVE "SELF-DEFENSE"

Moreover, as the origin of the Franco-German war of 1870 shows, it is possible for a State, acting technically in self-defense, to engage upon a war to achieve aggressive ends. The occasion for this war was the succession of a Prussian prince to the Spanish throne, which the French Government vigorously opposed. Bismarck, who for various reasons had desired a war with France, brought the dispute to a head on July 13, 1870 by editing the famous Ems dispatch to the effect that, in view of the French demands, the Prussian Emperor had virtually told the French Ambassador, Benedetti, to leave the country. This was a misrepresentation of the situation. Coming at the end of a period of tension, the Ems dispatch aroused an emotion in France which made conciliation impossible and which led the French Government on July 17, to declare war. French troops thereupon moved across the Rhine and took Saarbrücken.[32] The German army, under Moltke, soon administered an overwhelming defeat to France, and Germany imposed a peace treaty which deprived France of Alsace-Lorraine and imposed an indemnity of five billion francs. Such was the result of a war in which France had been technically the "aggressor" and Germany had acted in "self-defense."

The question of whether or not facts warranted the application of the doctrine of self-defense arose in the *Caroline* affair. During a rebellion in Canada in 1837, armed men from across the Canadian border attacked, upon American territory, the *Caroline*—a vessel belonging to Canadian insurgents. The subject became a matter of correspondence between the two governments, in which Lord Palmerston assumed responsibility for the destruction of the *Caroline*, as a public act of force, in self-defense. Mr. Webster, American Secretary of State, admitted the existence of the "great law of self-defense," but said the necessity should be "'instant, overwhelming, and leaving no choice of means and no moment for deliberation.'"[33]

Although no agreement upon this point was reached, discussion was dropped in view of the fact that the British Government apologized for entering American territory. Unlike the cases discussed above the *Caroline* case involved measures of force taken by Great Britain against individuals on American soil. These measures were not directed against the American Government. Nevertheless, had the United States and Great Britain been on unfriendly terms, the dispute over the meaning of "self-defense" in this case might have led to war.

The United States upon several occasions has invoked the doctrine of self-defense to invade foreign territory. In 1814 Major-General Jackson marched into West Florida, then a possession of Spain, during the war between the United States and Great Britain. In justification of this conduct, it was declared that the Seminole Indians in West Florida had been plotting against the United States. On November 28, 1818 Secretary of State Adams defended the occupation of Spanish territory "as a necessary measure of self-defense. . . ."[34]

In 1836 the United States defended the pursuit on Mexican territory of bands of Indians "upon the immutable principles of self-defense—upon the principles which justify decisive measures of precaution to prevent irreparable evil to our own or to a neighboring people."[35]

The doctrines advanced by the United States in the case of the *Caroline*, the Seminole Indians, etc., apply to instances where the offenders have been individuals located upon foreign territory. These doctrines might not necessarily apply, therefore, between States.

### SELF-DEFENSE AND THE MONROE DOCTRINE

It has been agreed that the anti-war pact does not prevent the signatories from going to war in self-defense and that each State decides for itself "where circumstances require to war in self-defense."[36] Several defi-

32. Whitton, *Moltke*, p. 197.

33. Moore, *Digest of International Law*, Vol. II, p. 412.

34. Moore, *Digest of International Law*, Vol. II, p. 406.

35. Moore, *Digest of International Law*, Vol. II, p. 419. A similar question arose over the pursuit of Villa into Mexico by a punitive expedition from the United States. *United States Foreign Relations*, 1916, p. 590. The United States unsuccessfully invoked the doctrine of self-defense in the Fur Seal Arbitration case with Great Britain (1893) as justifying its action in preventing foreign vessels from killing seals in the Behring Sea. Hyde, *International Law*, Vol. I, p. 109. For the Amelia Island case, see Moore, *Digest of International Law*, Vol. II, p. 408.

36. Mr. Kellogg's address to the American Society of International Law, April 28, 1928.

nitions of this doctrine have recently been advanced in connection with the anti-war negotiations. Thus the British Government declared that the protection of certain regions constituted for the British "a measure of self-defense." The United States did not mention the Monroe Doctrine during the course of the negotiations; nevertheless, the question is frequently asked, what effect will the pact have upon this Doctrine and its enforcement? It has been suggested that the United States will regard the use of force under the Monroe Doctrine as an act of self-defense.[37]

The use of force by the United States under the Monroe Doctrine is conceivable under at least three circumstances:

(1) To repel the military invasion of a Latin American State by a non-American power.

(2) To intervene in Latin American countries where disorders threatens foreign interests.

(3) To prevent the execution of agreements between Latin American and non-American powers providing for the establishment of naval bases, etc., which in the opinion of the United States might endanger its security.

If, under the anti-war pact, State X should invade a Latin American State, and assuming that both States were parties to the anti-war pact, the United States would recover its freedom under the pact with reference to State X. There would be no conflict between the treaty and this aspect of the Monroe Doctrine. The same consideration would apply to the execution of the treaty of November 3, 1903 between the United States and Panama. In this treaty the United States "guarantees and will maintain the independence of the Republic of Panama." It may be argued that the obligations of the United States vis-à-vis Panama under this treaty are similar to the obligations of other States under the Covenant and the Locarno agreement. In case Panama is attacked, the United States, under this treaty, would presumably be obliged to lend it military support. If both Panama and the attacking power are parties to the anti-war pact, the United States would be free to act with respect to the attacking power which had thus violated the anti-war pact. If Panama should not become a party to the pact,[37a] the United States would apparently have to justify the use of force against a signatory to the pact in behalf of Panama, on the ground of self-defense; *i.e.*, of defending the Panama Canal Zone. The United States holds this zone under perpetual lease and for the purposes of the treaty it would probably be regarded as part of the territory of the United States.

But will the pact prevent the United States from continuing its policy of military intervention in Central American countries? The United States delegation at Havana vigorously opposed a non-intervention resolution at the time when the United States was carrying on its anti-war negotiations.[38] The government of the United States has frequently carried on military operations without any direct authorization of Congress, although that body under the Constitution has the power to declare war.[39] Moreover, a number of governments have landed marines or other troops in disorderly countries for the purpose of protecting foreign interests without regarding such an act as necessarily creating a state of war.[40]

It may be argued, therefore, that the anti-war pact does not affect the right of temporary intervention by the United States or other powers. Nevertheless if the anti-war pact does not prohibit the United States from intervening in Latin America, it does not prevent European governments from doing so for the same reason. The question therefore arises, how may the United States, under the anti-war pact, forcibly prevent European intervention in Latin America, unless it justifies the use of force for this purpose on the ground of self-defense?

Any such definition of self-defense has

37. The British Government stated in its note of May 19: "The Government of the United States have comparable interests any disregard of which by a foreign power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government."
In his Minneapolis speech on the Monroe Doctrine in 1923, Charles Evans Hughes declared that the Monroe Doctrine "is a policy of self-defense . . . . it still remains an assertion of the principle of national security."

37a. Panama has, however, signified its intention of adhering to the pact.

38. Cf. *Pan American Conference, Part I*, F. P. A. *Information Service*, Vol. IV, No. 4, p. 67.

39. Cf. *The Powers of the President as Commander-in-Chief*, F. P. A. *Information Service*, Vol. IV, No. 10.

40. Cf. Hyde, *International Law*, Vol. I, p. 117; Fauchille, *Droit International Public*, Vol. I, p. 538 ff.

been regarded with wide misgivings.[41] It has been argued that the solution of the difficulty is in placing all intervention under some form of international control which will prevent the abuse of intervention for the ends of a single power.[41a]

Will the pact prevent the United States from using force to prevent a Latin American State from granting naval bases, etc., to a non-American power? Hitherto any such agreement has been regarded as a danger to the security of the United States, and it is possible to argue that any preventive acts to forestall such a danger would be "self-defense" within the meaning of the pact. Nevertheless, if all the parties to the pact should support this doctrine of "preventive" wars, it is difficult to conceive of any war which the pact actually prohibits.[42] In considering the necessity of adopting a reservation to this effect, the question should be asked whether the fear of such agreements is of more than theoretical importance; and also whether or not the danger, if it exists, cannot be guarded against by other means. At the Washington Conference the British, American and Japanese Governments signed an agreement providing for the *status quo* in regard to naval bases in the Pacific.[43] A similar agreement might be negotiated among the various American governments.

41. The Soviet note of August 31 declared: "In the opinion of the Soviet Government there must be a ban not only on war in its formal juridical sense (such as normally follows a declaration of war), but also such military actions as a blockade or the occupation of foreign territory. . . "

The Paris *Oeuvre* (July 21, 1928) states: " 'We well understand,' " Mr. Chamberlain says to Mr. Kellogg, " 'sending warships to Egypt will no more be an act of war than is the disembarkment of American marines in Nicaragua.' "

Professor Gilbert Murray says: "If Americans begin to say: we can intervene in Nicaragua . . . and if Great Britain should make similar claims . . . that is a rather subtle and dangerous inroad on the general principle of the equality of all States before the law." *Minutes of the Ninth Annual Meeting of the General Council of the League of Nations Unions*, p. 34.

41a. Cf. Buell, Raymond L. *The United States and Latin America, A Suggested Program*, F. P. A. *Information Service*, Vol. III, S. S. No. 4.

42. Somewhat the same question arises under Article 80 of the Treaty of Versailles which provides that Germany and Austria shall remain independent unless the League Council consents otherwise. May France legally go to war under the anti-war pact in case these two States unite in defiance of the Council? Likewise Articles 42-44 of the Treaty prohibit Germany from maintaining fortifications or troops in the Rhineland. If Germany violates this provision, "she shall have been regarded as committing a hostile act" against the Powers. *Le Temps* (July 17, 1928) states that if Germany violates this demilitarized zone, the other parties to the anti-war pact could regard such an act as "the first step in preparing for a war as an instrument of national policy", and therefore a violation of the anti-war pact.

43. Article XIX, Treaty for the Limitation of Armament, February 6, 1922. The Monroe Doctrine was originally directed against the "colonization" of South America by outside powers, but the United States apparently has not objected to extensive emigration from Italy, Germany and Japan to various South American countries.

**PROTEST AGAINST THE BRITISH DOCTRINE**

It would seem possible to give the term "self-defense" perhaps as many divergent interpretations as the term "aggressive war." Moreover, the policy which one State defends on the ground of "self-defense" may be criticized by another State on the ground of "aggression," or "imperialism." Thus in its note of August 31, 1928 the Soviet Government criticized the so-called British Monroe Doctrine. It stated that the recognition of the British claim "might be an example for other nations to follow." The probable result would be that there would not be a single spot in the world where the terms of the pact were applicable. The Soviet Government could not "but regard this reservation as an attempt to use the pact itself as an instrument of imperialistic policy."

Likewise the president of the Wafd, the Egyptian Nationalist party, and the presidents of the Egyptian Senate and Chamber protested against the British reservation. The first declared that the peace of the world could not be assured if such a reservation could cover "imperialistic enterprises having no other justification than force."[44] In signifying its intention to adhere to the pact on September 4, the Egyptian Government stated that such adherence was not to be considered as "implying any admission of any reserve whatever made in connection with the pact."[44a]

In its note of October 4, 1928 in regard to the pact, the Persian Government also declared that "the reservations made by certain powers," cannot under any circumstances or at any time create on the part of Persia any obligations whatsoever to recognize anything possibly susceptible of contravening its territorial and maritime rights and possessions.

On October 31, 1928 the Turkish Government sent a declaration to the United States adhering to the anti-war pact, "subject to the ratification of its action by the Grand National Assembly." In a note the Turkish Government declared, in part:

"Believing that the treaties of neutrality

44. The communications are printed in *l'Europe Nouvelle*, August 25, 1928.

44a. *Egyptian Gazette* (September 5, 1928) p. 13.

concluded between Turkey and other states are in harmony in spirit and in letter with the aim and significance of the treaty . . . Turkey agrees to sign the pact without reservations . . . and considers itself reciprocally bound by the text of the proposed act exclusive of all the documents which have not been submitted as an integral part of the pact to the collective signature of the participating states."

This last sentence is an apparent reference to the British reservation in regard to "special interests," since in the note quoted above Turkey agrees to the "explanations" given in the American note of June 23.

Thus Egypt, Persia and Turkey have made reservations in regard to the British Monroe Doctrine. Afghanistan has not yet replied, but within recent years it has usually acted in agreement with its neighbors. Russia has also protested, as we have seen, against the British reservation.

### DANGERS OF ABUSE

Fears have been expressed also lest the United States shall attempt to justify acts of force under the Monroe Doctrine on the ground of self-defense. Senator Molinari, an official spokesman for the incoming government, recently stated in the Argentine Senate: "As long as there are North American soldiers in Nicaragua no one can use the words employed by Secretary Kellogg."[45] A number of States in Latin America, led by Argentina, Brazil and Chile, had failed to adhere to the pact by November 1, 1928; and the press reported that this delay was due to their uncertainty that the United States Senate would make a reservation stating that the pact did not affect the use of force by the United States under the Monroe Doctrine.

There are at least two ways by which the discretion of individual States in this respect may be narrowed and disputes over the meaning of self-defense removed. One is by the adoption of an interpretation of the term self-defense, restricting it to repelling the actual invasion of territory. Such an interpretation might take the form of a protocol annexed to the treaty. It is doubtful, however, if in view of the wide interpretation of "self-defense" employed in the past any important State would accept such a limited definition. Whatever the definition may be, any attempt to define the meaning of "self-defense" is likely to be as unsuccessful in international law as it has been in private law.

A second method of preventing the abuse of the doctrines of self-defense and cooperative defense is by establishing some international means of determining in a particular case whether or not a nation is justified or would be justified in acting in self-defense. Mr. Kellogg hinted at some such possibility when he stated before the Society of International Law that if a State has "a good case" in invoking the doctrine of self-defense, "the world will applaud and not condemn its action."

### THE LEAGUE AND SELF-DEFENSE

The fact should be emphasized that international means for this purpose already exist in the case of a vast majority of the States which have signed or adhered to the anti-war pact. A Member of the League of Nations cannot legally go to war simply by invoking the doctrine of self-defense. All disputes in which Members of the League are involved must be submitted, as we have seen, to some form of arbitration or conciliation; and any resort to war without first invoking this procedure, except possibly to repel actual invasion, is a violation of the Covenant. This fact was clearly illustrated in the Graeco-Bulgarian frontier incident of 1925. On October 22 the Bulgarian Minister of Foreign Affairs telegraphed the Secretary-General of the League that a Greek soldier had crossed the frontier and fired on a Bulgarian sentry. The Bulgarian sentry replied and killed the Greek, who fell in Bulgarian territory. General firing resulted and Greek Government ordered troops to advance into Bulgarian territory. Bulgaria telegraphed the League of Nations, asking that in virtue of Articles 10 and 11 of the Covenant the Council be convened "without delay to take the necessary steps." The telegram closed by saying, "Convinced that the Council will do its duty, the Bulgarian Government is maintaining its order to Bul-

45. *La Prensa* (New York), September 10, 1928.

garian troops not to resist the invaders of its territory."[46]

The next day, M. Briand, Acting President of the Council, telegraphed both the Greek and Bulgarian Governments, reminding them of their obligations "under Article 12 of the Covenant not to resort to war and of grave consequences which Covenant lays down for breaches thereof."[47] He "exhorted" the two governments to retire their troops behind their respective frontiers.

In reply, Greece insisted that Bulgaria had misstated the facts; that the firing was opened by Bulgarians. "The sudden and unprovoked character of the Bulgarian aggression is obvious." Consequently the Greek Government had been obliged "to take all measures considered necessary for the defense and, if necessary, the clearance of its national territory." The measures Greece had taken "are nothing but measures of legitimate defense and could not be considered as hostile acts likely to lead to a rupture. . . ." The League Council met on October 26 at Paris, and representatives of Greece and Bulgaria were present. The President read a statement setting forth the conflict in facts. The Council passed a resolution requesting Greece and Bulgaria to withdraw their troops behind the respective frontiers within sixty hours. Both governments accepted this "invitation" and military attachés of France, Great Britain and Italy later reported that this withdrawal had actually taken place.

The Council next proceeded to determine the facts and assess the responsibilities. The Bulgarian representative declared that Greece had been guilty of "aggression." The Greek representative declared that Greece had acted in "legitimate defense."

M. Briand, Acting President of the League Council, commenting on the fact that Greek troops had actually entered Bulgarian territory, stated, according to the Council minutes, that he had

> "understood the representative of Greece to indicate that all these incidents would not have arisen if his country had not been called upon to take rapid steps for its legitimate defence and protection. It was essential that such ideas should not take root in the minds of nations which were Members of the League and become a kind of jurisprudence, for it would be extremely dangerous. Under the pretext of legitimate defence, disputes might arise which, though limited in extent, were extremely unfortunate owing to the damage they entailed. These disputes, once they had broken out, might assume such proportions that the Government, which started them under a feeling of legitimate defence, would be no longer able to control them.
>
> "The League of Nations, through its Council, and through all the methods of conciliation which were at its disposal, offered the nations a means of avoiding such deplorable events. The nations had only to appeal to the Council. . ."[48]

The Council now appointed a commission of representatives of France, Italy, Sweden and the Netherlands, headed by Sir Horace Rumbold, to travel to the scene of the incident and learn what actually occurred. Both Bulgaria and Greece agreed to accept its decisions. Following an exhaustive inquiry the Rumbold commission reported to the Council.[49] The commission declared that the information upon which the Greek Government had acted had been false or exaggerated—"news which was forwarded unverified by subordinates and distorted by some of them,—and was rather too readily accepted by the Greek General Staff." The Greek Government which had acted without premeditation had believed that invasion was imminent but its belief was founded upon incorrect information.

The League Council declared that "the local and central authorities were entitled to take within the Greek frontier all military measures which they considered the security of the country necessitated; but the Greek Government should not have caused its armed forces to cross the Bulgarian frontier."

Greece had violated Bulgarian territory without sufficient cause and therefore reparation was due for the damage which resulted. The commission recommended that Greece pay an indemnity of 30,000,000 levas to Bulgaria in reparation for the loss of Bulgarian life and property, deduction having been made for the initial murder of the Greek soldier.

46. League of Nations, *Official Journal*, November 1925. p. 1696.

47. Article 12: The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council.

48. *Ibid.*, p. 1709.

49. *Official Journal*, League of Nations, February 1926, p. 196.

But the commission did not stop here. It inquired into the fundamental political situation which had given rise to the dispute. It recommended that neutral officers be appointed to take control of the Greek and Bulgarian frontier forces and that certain measures be taken to remove the difficulties arising out of the local minorities and the Bulgarian "comitadjis" problems.

This case is of striking interest for two reasons. First, it shows that so far as its wars are concerned, a Member of the League is not free to define the meaning of self-defense, and when it attempts to do so, it may act upon false information and aggravate a dispute which otherwise might be kept within modest bounds and quietly settled. Under the Covenant an international body examines the question of whether or not a State is really acting in self-defense; it also takes steps to prevent the dispute from developing into formidable proportions.[50] Second, this case shows that if the danger of war is really to be removed, the underlying political difficulties must be solved.

As far as members of the League are concerned—and the principle applies to any action taken by Great Britain under the so-called British Monroe Doctrine[51]—a type of international control exists which may prevent the abuse of the doctrine of self-defense whether under the League Covenant or the anti-war pact. The chief States to which this international control does not apply are the United States and Russia. Whether or not the anti-war pact will be vitiated may depend very much on how these two States employ the doctrine of self-defense in the future.

This same international machinery controls the application of cooperative defense, whether under the Covenant, the Locarno agreement, or the French alliances. The sanctions contained in these agreements cannot be applied until the pacific processes of the League have been exhausted. As far as Members of the League are concerned each State decides whether or not a breach of the Covenant has been committed,[52] and whether or not it is under obligation to apply sanctions. As far as the parties to the Locarno agreement are concerned, the Council decides by unanimous vote.[53]

To summarize, the only wars not prohibited by the pact are wars in self- or cooperative defense. Before any such war or the application of the sanctions of the Locarno agreements or the Covenant may be resorted to, some State must first have gone to war in violation of its obligations. Moreover, each State, if a Member of the League, is not free to determine whether or not it is acting in self-defense. This question is submitted to the League Council, or may be submitted to the Permanent Court of International Justice.

## THE INTERPRETATIONS

During the anti-war pact negotiations, Secretary Kellogg declined to accept amendments or reservations to the pact. Any such reservations, he said, would weaken its purity and simplicity. Naturally he would be opposed to similar reservations or amendments by the United States Senate. Nevertheless, in his address to the American Society of International Law, Mr. Kellogg was the first to lay down "interpretations" which other governments subsequently accepted in place of amendments or reservations.

On August 8 the press reported Secretary Kellogg as follows: "Interpretations to the multilateral treaty to renounce war are in no way a part of the pact and cannot be considered as reservations." It was stated that the interpretations will not be deposited in the text of the treaty.[54] Whether or not the President transmits the interpretative notes to the Senate with the text of the

50. Under the protocol of the Permanent Court of International Justice, States may confer upon this court the right to determine the existence of facts which, if estabished, would constitute a breach of an international obligation; and also the nature or extent of the reparation to be made for such a breach. Fifteen States are bound by the optional clause conferring upon the court compulsory jurisdiction in these matters. Consequently it would appear as if the court could decide for these States whether or not a violation of the anti-war pact had actually occurred. R. Cassin, *"La guerre hors la loi et la Cour internationale de Justice."* *Journal de Genève,* August 9, 1928.

51. Article 14 of the British Draft of an Anglo-Egyptian alliance of July 28, 1927 provided that "Nothing in the present treaty is intended to or shall in any way prejudice the rights and obligations which devolve or may devolve upon either of the high contracting parties under the Covenant of the League of Nations." *Papers Regarding Negotiations for a Treaty of Alliance with Egypt,* H. M. Stationery Office, London, Cmd. 3050, p. 13.

52. Cf. *The League of Nations and Outlawry of War,* F. P. A. *Information Service,* Vol. III, No. 25.

53. Cf. p. 358.

54. *United States Daily,* August 9, 1928.

treaty, the Senate already has access to the text of the diplomatic correspondence embodying these interpretations. In determining whether or not to vote for the treaty, each Senator will thus be able to construe the treaty in the light of these interpretations.

If the terms of the treaty were precise, these interpretations might not be of importance. But in this case the treaty merely renounces war "as an instrument of national policy"—a phrase susceptible of wide and varying meanings. It does not seem possible to interpret this phrase without reference to the interpretations given it by Secretary Kellogg in his address to the American Society of International Law and in the notes of the various governments which preceded the signature of the pact.

In 1850 the United States and Switzerland signed a most-favored-nation treaty. In 1898 the Swiss Government declared that this treaty entitled it to receive unconditional most-favored-nation treatment by virtue of an interpretation made by Switzerland at the time of signing the treaty and which was accepted then by the American Minister. Secretary John Hay agreed to this position, although it contradicted the customary American policy of negotiating only conditional most-favored-nation treaties. Secretary John Hay investigated the Swiss contention, and in a note of November 21, 1898 declared:

> "As a result of this investigation, it appears that the Executive Department was advised by its plenipotentiary of the alleged understanding, that the dispatch indicating it was communicated by the President to the Senate in connection with the treaty submitted for ratification, and that the treaty was ratified without amendment of the clauses in question.
>
> "Under these circumstances we believe it to be our duty to acknowledge the equity of the reclamation presented by your Government. Both justice and honor require that the common understanding of the high contracting parties at the time of the executing of the treaty should be carried into effect."[55]

A second precedent may be found in an exchange of notes of April 4, 1908 between Secretary of State Elihu Root and Ambassador Bryce, at the time of the signing of the Treaty of Arbitration between Great Britain and the United States. These notes declared that the final sentence of Article II[55a] has been inserted in order to preserve to both governments the freedom of action "secured to the United States Government under their constitution until any Agreement which may have been arrived at shall have been notified to be finally binding and operative by an exchange of Notes." It was also "understood that this Treaty will not apply to existing pecuniary claims nor to the negotiation and conclusion of treaties for the settlement of questions connected with Boundary Waters."

These notes were sent to the Senate for its information along with the treaty, but the notes were not mentioned in the Senate resolution, the instrument of ratification or the *procés-verbal* of exchange, all of which take the customary form.[55b]

The status of the interpretative notes is of more than academic interest for two reasons. First, some Senators may, before approving the pact, desire to secure a definition of the term self-defense especially in its relation to the Monroe Doctrine. In view of the interpretations made by various governments to the treaty, would the Senate be justified in making interpretations of its own?

Second, would approval of the anti-war pact without reservations or interpretations mean approval by the United States of the interpretations of other governments?

The Soviet Government declared in its note of August 31 that "inasmuch as the note of the British Government has not been communicated to the Soviet Government as an integral part of the compact or its supplement, it therefore cannot be considered obligatory for the Soviet Government." Nevertheless, the British Government did transmit its interpretative notes to the League of Nations having a membership of fifty odd States. And Mr. Kellogg tacitly accepted these interpretations, in the correspondence leading up to the treaty. Despite its statement that the British interpretations were of no legal value the Soviet Government felt it necessary to say that it could not agree with any reservations

55. *Foreign Relations of the United States*, 1899, p. 747.

55a. Special agreement defining the matter in dispute shall be drawn up, but, according to the final sentence of Article II, "Such agreements shall be binding only when confirmed by the two Governments by an Exchange of Notes."

55b. Miller, David Hunter. *Reservations of Treaties, Their Effect and the Procedure in Regard Thereto*, p. 87-89.

"which can serve as justification for war."[56] In adhering to the pact the Egyptian, Turkish and Persian Governments also declared that they could not be bound by the reservations of the other parties.[57]

### THE PACT AND RUSSIAN RECOGNITION

The United States did not as we have seen invite the Soviet Government to adhere to the pact because the United States has not recognized the Soviet Government. Such an invitation was, however, extended by France, and Russia has now adhered. Senator Borah has expressed the opinion that ratification by the United States of the anti-war pact, to which Russia has adhered, will constitute recognition of Russia by the United States.[58]

The Soviet Government was one of the original parties to the mutilateral convention signed at Lausanne July 24, 1923, providing for freedom of transit and navigation on the Straits. The parties to the convention were Great Britain, France, Italy, Japan, Bulgaria, Greece, Rumania, the Union of Soviet Socialist Republics, Jugoslavia and Turkey. Of these States, Turkey alone had recognized Russia at the time of signature of the treaty. This was done in a treaty of March 16, 1921. Great Britain later recognized Russia in a note of February 1, 1924; France followed with a note of October 28, 1924; and Italy with a note of February 7, 1924. Apparently these governments did not regard their association with the Soviet Government in the Straits Convention as a recognition of that government. The fact that Russia was recognized at a later date by France and Great Britain may or may not have been due to Russia's participation in this treaty.

On June 21, 1926 the United States, the Soviet Government and a number of other parties signed a convention revising the International Sanitary Convention of January 17, 1912. This convention was approved by the United States Senate on March 22, 1928 subject to a number of "reservations," two of which were as follows:

> "1. The ratification of this international sanitary convention is not to be construed to mean that the United States of America recognizes a régime or entity acting as government of a signatory or adhering power when that régime or entity is not recognized by the United States as the government of that power.
>
> "2. The participation of the United States of America in this international sanitary convention does not involve any contractual obligation on the part of the United States to a signatory or adhering power represented by a régime or entity which the United States does not recognize as representing the government of that power until it is represented by a government recognized by the United States."[59]

However, on September 28, 1928 the press reported that the State Department regarded its treaty with the Nanking Government in China of July 25, 1928 as constituting *de jure* recognition of that government by the United States.[60] If this report is correct, the precedent may be of importance in connection with Russia's adherence to the anti-war pact.

## THE PACT AND THE CAUSES OF WAR

More than three centuries ago, Albericus Gentilis wrote in his *De Jure Belli:* "In the absence of a supreme tribunal charged with passing judgment on international disputes, and in the absence of a super-state charged with the power to carry out the judgments of such a tribunal, States have no other alternative than to resort to force in order to have their rights recognized and their interests respected."

56. Cf. p. 364.

57. Cf. p. 370.

58. *Christian Science Monitor,* September 13, 1928.

59. *United States Treaty Series,* No. 762, p. 140. In June 1927 the Council of the League of Nations adopted a report of the Committee for the Progressive Codification of International Law on the question of the admissibility of reservations to general (or multilateral) conventions. It was stated that "if the principles of the report are acted upon, this will prevent States from attaching to their signature or accession reservations which are not accepted by the other parties to the convention, but it may well be that a State may desire to make a reservation which, if it had been put forward during the Conference, would have been accepted by the other parties." It therefore recommended that the method followed by the Conference on Customs Formality of 1923 should be followed. At the end of that Conference all the reservations which the Conference was willing to allow were embodied in a separate protocol, and the protocol provided that subsequent reservations should be accepted if the Council of the League so decided after consulting the Economic Committee. It was stated that this machinery ensured the acceptance of reservations which were consistent with the intentions of the original signatories, but no others. *Official Journal* of the League of Nations, July, 1927, p. 800.
The status of reservations to the general Convention for the Renunciation of War is, however, uncertain.

60. *United States Daily,* September 29, 1928; cf. also New York *Times,* September 28, 1928.

The movement in favor of international organization during the last few years has usually assumed that if war is to be effectively banned, some peaceful means for settling disputes must be established.

During the negotiation of the anti-war pact, the French, Polish and Czechoslovak Governments, all of which have profited from the 1919-1920 peace treaties, stressed the belief that the anti-war pact would, to quote the French note, perpetuate "pacific and friendly relations under the contractual conditions on which they are today established."[61]

### FREEZING THE STATUS QUO

Does this statement mean that the States regard the anti-war pact as one more step in freezing the *status quo?* Do they regard the pact as an added guarantee that the boundaries established in the peace treaties shall not be changed by force? In a note of October 6, 1928 the Hungarian Government, which lost territory as a result of the World War, informed the United States that it adhered to the anti-war pact "under the supposition that the Government of the United States as well as the governments of the other signatory powers will seek to find the means of rendering it possible that in the future injustices may be remedied by peaceful means."

Article 2 of the anti-war pact declares:

> "The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise between them, shall never be sought except by pacific means."

This article does not seem to create a positive obligation to *settle* disputes by pacific means. It merely provides that they shall not be settled by non-pacific means. Neither does this article define the procedure to be followed. In his address of August 27, M. Briand declared, "Peace is proclaimed. That is well; that is much. But it still remains necessary to organize it. In the solution of difficulties, right and not might must prevail. That is to be the work of tomorrow."[62]

The argument that the pact freezes the *status quo* and hence is undesirable is weakened by the fact that Germany who is vigorously opposed to the freezing of the *status quo* was among the first to support the anti-war treaty. Nearly a year before the signature of the anti-war pact Dr. Stresemann, the German Foreign Minister, had declared, "there does not exist in Germany any responsible man who would be criminal enough to drag Germany into a war with any power whatsoever, neither in the west nor in the east."[63] Germany does not like some of the provisions of the Treaty of Versailles, but Germany does not wish to change them by force. Apparently Germany believes that the conclusion of the anti-war pact will make for a better international feeling and that this feeling will lead to voluntary readjustments in the peace treaties of immensely more value than any attempted readjustments by force.

Moreover, as the Graeco-Bulgarian incident shows, the Members of the League have accepted already the obligation of pacific settlement and erected machinery to assure peace. Article 11 of the League gives any Member of the League "the friendly right" to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends." Article 19 gives the Assembly the right to advise the consideration of treaties "which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world."

The Members of the League have therefore devised machinery, imperfect as it may be, for the settlement of disputes. Through its arbitration agreements, its "Bryan Peace Commission treaties" and the anti-war pact, the United States has accepted the same obligations. But it has yet held back from participation in machinery to make the application of the obligations effective. It has not associated itself with the general activities of the League.

61. Cf. French note of July 14, 1928, Polish note of July 17, 1928, Czechoslovak note of July 20, 1928.

62. Mr. Reed Smoot, member of the United States Senate, recently declared: "The Kellogg agreement for renunciation of war is a great and basic step toward lasting peace. Yet it is clear that the agreement must be supplemented by other steps, such as additional arbitration treaties or international courts. . . ." *Foreign Relations and Peace,* New York *Herald-Tribune Magazine.* September 23, 1928, p. 3.

63. *Europe: A History of Ten Years;* Buell, with the aid of the F. P. A. staff, p. 108.

## THE QUESTION OF SANCTIONS

The first part of this report has shown that many States have emphasized the principle of sanctions or of cooperative defense. Many of them have stated that unless they can rely upon help from other States in case of attack they cannot disarm. Nevertheless, unlike the Covenant of the League, the anti-war pact contains no sanctions. If one party violates the pact, the other States do not promise to do anything about it; they simply are relieved of their obligation not to go to war against the guilty State. Nevertheless, in the case of wars prohibited by the Covenant, the violation of the pact by a League Member would encounter the sanctions imposed by Members of the League. The main sanction provided for in the Covenant is an economic boycott. The opinion has been frequently expressed that the League could not successfully apply such a boycott against a violator of the Covenant, so long as the United States, whose commercial interests would be immediately affected by such a boycott, insisted upon adhering to the old laws of neutrality which had been based on the legality of war.[64]

Several attempts to waive these traditional neutral rights of the United States in the case of an aggressor have been made. The original Burton resolution introduced December 5, 1927 declared that the policy of the United States was to prohibit the export of arms to an aggressor country, as determined by the President.[65] Objection to the original resolution was made on the ground that in prohibiting the export of arms to one belligerent and not to another, the United States would be violating the rules of neutrality. This objection would now seem to have been met by the anti-war pact; *i. e.*, if a State goes to war in violation of the pact, the United States is under no obligation to treat it as a neutral but as a State which has violated its obligations.

While the United States has not undertaken any obligations to apply sanctions against a State which violates the anti-war pact, it is argued that the United States will feel morally bound to support the pact of which it is the author by waiving its "neutral rights" in case the League Members should attempt to impose an economic boycott against a State which violates the pact and the Covenant at the same time.[66] On July 30, 1928 Sir Austen Chamberlain declared in the House of Commons that the importance of the anti-war treaty depended on "how the rest of the world thought the United States was going to judge the action of the aggressor, and whether they would help or hinder him in his aggression."[67]

It has also been suggested that every party to the anti-war pact will feel morally bound to act against a State which violates it regardless of the particular issue. M. Briand declared on August 27 that a guilty State "would run the positive risk of seeing all of them gradually and freely gather against it with redoubtable consequences that would not long be ensuing."

Senator Borah in an interview in the New York *Times* of March 25, 1928 declared:

> "Another important result of such a treaty [the anti-war treaty] would be to enlist the support of the United States in cooperative action against any nation which is guilty of a flagrant violation of this outlawry agreement. Of course, the Government of the United States must reserve the right to decide, in the first place, whether or not the treaty has been violated, and second, what coercive measures it feels obliged to take. But it is quite inconceivable that this country would stand idly by in case of a grave breach of a multilateral treaty to which it is a party."

At present the League of Nations Council has been given the authority to conciliate disputes arising among the great majority of the States of the world and the action of the Council may therefore be of importance

64. In view of the fact that the United States has always recognized the law of contraband and blockade, the fear that the United States would obstruct belligerent sanctions if imposed by the League seems to have been exaggerated. Cf. *American Neutrality and League Wars*, F. P. A. *Information Service*, Vol. IV, No. 2.

65. The resolution was later amended to prohibit arms exports to *any* nation.

66. The preamble of the treaty states that any signatory Power "which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this Treaty." Professor James T. Shotwell argues that there is a "moral duty expressed or implied in this phrase, that the signatories to the treaty do not become the silent partners of an aggressor; but no formal obligation is entered into to put down the aggression." *The Pact of Paris*, International Conciliation, October, 1928, p. 451. He adds: "We are inclined to accept the view, almost universally held outside the United States, that the principle involved in this single phrase is at least equal in importance with that in the heart of the treaty."

67. Nevertheless, although the Kellogg pact was praised by a number of speakers at the League Assembly in September 1928, none of them stated the belief that the treaty would lead to cooperation between the United States and the League in regard to sanctions.

in bringing about or preventing war; or of stigmatizing as an aggressor a State which goes to war. Obviously such a decision may vitally offend the interests of the United States and it is argued that the anti-war pact will morally oblige the United States to accept the conditions thus created whereas otherwise it could protest against it. Commenting on this situation Professor Edwin Borchard has stated: "Far better and safer would it be had we openly joined the League of Nations and been privileged to take part in deliberations which may lead to most important consequences. . . "[68]

M. Jules Sauerwein, prominent French journalist, stated in the New York *Times* that "the United States Government becomes the moral guardian of the *status quo* created by the Peace Treaty and subsequent treaties." After reviewing the disputes over Vilna and Danzig, Italian ambitions in North Africa, Jugoslavia's demand in regard to Salonika, Bulgaria's aspiration in regard to Constantinople, and Russia's threat to peace, he concludes: "We can see what a magnificent thing the United States has undertaken in seeking to prevent another war in unfortunate Europe."[69]

On the other hand, Lord Cushendun, Acting Secretary of State for Foreign Affairs, declared in an interview at Paris at the time of signing the pact that he did not think the pact would make any "modification" in the American "attitude of aloofness from European complications, although there are some of us who might wish otherwise. There is no implication or any indication on the part of America to concern itself with European affairs."[70]

Moreover it may be argued that the United States is not bound in any way by the anti-war pact to pay attention to any decisions of the League. The ratification of the pact will not change the legal relationship between the United States and the League. The United States will still have the right to decide whether or not a State going to war has done so in self-defense. Moreover, even if the anti-war pact were not in existence, the United States would be affected by a decision of the League Council just as the United States would be inevitably affected by another European war.[71]

As far as sanctions are concerned, the anti-war pact is important from another angle: it would seem to prevent a State from resorting to self-help to enforce a claim against another State. Suppose, for example, that the United States and State X submitted a dispute to an arbitral tribunal and that the tribunal decided in favor of the United States. Suppose also that State X refused to execute the award. Under the anti-war pact it may be argued that the United States would be prohibited from going to war against State X to compel execution. The anti-war pact would not, however, seem to prohibit the use of *international* sanctions for this purpose, since the pact prohibits merely war as an instrument of *national* policy. An international sanction does not necessarily mean an international force, but it may mean merely international authorization and control over the action of a single State.

### THE PACT AND DISARMAMENT

In the third place, disarmament has been regarded as essential to a peaceful international society. In its note of April 27, 1928 the German Government declared that the anti-war pact "must give a real impulse to the efforts for the carrying out of general disarmament." The Soviet Government declared that without the obligation to disarm, the anti-war pact "will remain a dead letter without real meaning." An opposite point of view has been expressed, however, by President Coolidge and by Mr. Herbert C. Hoover, the Republican presidential candidate. The former declared that the anti-war pact did not detract from the "obligation" to "maintain an adequate national defense against any attack."[72]

In his speech accepting the Republican nomination for President, Mr. Hoover declared that "we must and shall maintain our naval defense and our merchant marine in the strength and efficiency which will yield

68. Williamstown address, cf. p. 365.
69. New York *Times*, July 23, 1928.
70. Chicago *Tribune*, Paris edition, August 28, 1928.

71. In his speech on May 30, 1928 at Gettysburg, President Coolidge declared: "Our investments and trade relations are such that it is almost impossible to conceive of any conflict anywhere on earth which would not affect us injuriously." In his American Legion speech of August 15, 1928, President Coolidge declared that the World War demonstrated "so clearly the interdependence of all people that we are not likely to hear again in responsible quarters that what other nations do is no concern of ours."

72. American Legion Address, August 15, 1928.

to us at all times the primary assurance of liberty, that is, of national safety." In his Elizabethtown, Tennessee, address, October 6, 1928, Mr. Hoover said that "we must maintain our navy and our army in such fashion that we shall have complete defense of our homes from even the fear of foreign invasion." Similar expressions have been made in Europe.[73]

While armaments for defense may be in keeping with the spirit of the anti-war pact, obviously this need is relative rather than absolute. That is, the defensive needs of the United States depend upon the size of armaments of its neighboring powers and the political likelihood that these powers will attack the United States.

Commenting on Mr. Hoover's speeches on the navy, President Nicholas Murray Butler of Columbia University has stated: "When the American people pledge renunciation of war they mean what they say, and take it for granted that our fellow-nations mean what they say. We shall not support any policy which would at once enter upon a new and enlarged plan of naval construction under the guise of defending ourselves against some power which has only just taken a formal pledge not to attack us. The contradiction and the hypocrisy of it would be comic were they not so unspeakably tragic."[74]

It should be pointed out, however, that the army of the United States is already one of the smallest in the world and that its navy is inferior in strength, so far as large cruisers are concerned, to that of Great Britain.[75] Nevertheless, it is argued that if the parties to the anti-war pact should proceed to lay down large building programs, they do not take the pact seriously and leave themselves open to charges of bad faith and even of illicit ambitions. If the real spirit of the pact is to be preserved and fostered, international agreements in regard to armaments upon a basis acceptable to the principal leading powers, it may be argued, is essential.

## THE MORAL SIGNIFICANCE OF THE PACT

The legal aspects of the anti-war pact have now been discussed. It has been necessary to determine the actual legal effect of the pact upon the right to go to war, and the relation of this pact to other factors in international relations, such as the pacific settlement of disputes, sanctions and disarmament. Our analysis seems to have demonstrated that the legal criticisms directed against the pact are not so great as some critics have supposed and that it contains no legal commitments not explicitly stated in the document. But, even if the pact should contain loopholes through which a self-seeking State may squirm, friends of the pact believe that it must be judged fundamentally, not by technical criteria, but by the moral and spiritual effect it may have upon world opinion and upon the future conduct of diplomacy and international relations.

Until very recent times groups in every important country have glorified the institution of war. It was not many years ago that von Moltke wrote: "War is an element in the order of the world ordained by God. In it the noblest virtues of mankind are developed; courage and the abnegation of self, faithfulness to duty, and the spirit of sacrifice; the soldier gives his life. Without war the world would stagnate and lose itself in materialism." In every great State the army and navy have occupied a high social position and have had great influence upon policy.

Moreover, the history of European diplomacy and international relations generally seems to demonstrate that most great powers have regarded war as sooner or later inevitable. They have relied for their safety and their rights upon physical strength.

Diplomats formed combinations and made bargains to postpone the evil day; but down in their hearts they believed the day would come. In 1914 Europe was ridden with war psychology. The international system was built upon a conviction of war's inevitability.

73. The British Secretary of State for War, Sir Laning-Worthington-Evans, stated that the pact should not affect British armed forces which "have never been used for the purpose of aggression." *The Times*, London, July 19, 1928.

74. New York *Times*, August 20, 1928.

75. The naval question will be discussed further in a forthcoming *Information Service* report. Cf. *International Naval Situation*, Vol. III, Nos. 21-22.

No State dreamed of renouncing war as an instrument of national policy.

Ever since the Congress of Berlin of 1878 the great powers followed a policy of threats. They did not intend that war should occur as a result of their demands, but they did believe in backing up these demands with a show of force; they believed that the States upon which they made these demands were weak and would therefore have to give way.[76]

Friends of the anti-war pact state that it will have a revolutionary effect upon international relations as they have existed in the past. In his American Legion speech, President Coolidge declared: "Had an agreement of this kind been in existence in 1914, there is every reason to suppose that it would have saved the situation and delivered the world from all the misery which was inflicted by the great war." It is argued that the anti-war pact will abolish war psychology, and force governments and peoples to think in terms of peace; that it will no longer be possible for Foreign Offices to advance their ends by a policy of threats—whether open or veiled; that it will no longer be possible for demagogues to whip up popular enthusiasm in favor of wars on behalf of "national destiny" or "national honor." Disputes will continue to arise between nations; and they may or may not be positively settled by peaceful means. But it is contended that as a result of the new peace psychology produced by the pact, peoples will take the view that no matter how serious the dispute, there is no justification for solving it by force, unless the question of self-defense is involved. Some opponents state that the pact has no positive value since it does nothing which the League of Nations has not done. Nevetheless, while the League has made great progress toward organizing the machinery of peace, the "gap in the Covenant" still exists. This gap will be filled by the pact, it is argued, and, what is of equal importance, the United States, which has declined to accept the obligations of League membership, for the first time commits itself not to embark upon aggressive war.

Other opponents argue that the pact is useless without machinery for the pacific settlement of disputes, without disarmament, without the modification of peace-time policies which in the past have led to war. But in reply it is declared that if governments take the pact seriously, if in a high act of faith they really believe their neighbors have renounced war, they will soon translate this belief into acts. The occupation of the Rhineland, the prohibition of the union of Germany and Austria, the demand for large navies and high tariff walls rest largely upon the fundamental fear of war. If nations now really trust each other's promise, the justification for these and for other policies will, it is contended, come to an end.

If despite the ratification of the anti-war pact, governments decline to change their policies, if they construct large navies in the name of self-defense, and if they follow policies which unnecessarily irritate their neighbors, they may be charged with hypocrisy and the international situation may become more critical than if no anti-war pact existed. But it is argued that even if governments pay only lip service to the ideal, the anti-war pact will become a formidable weapon in the hands of public opinion. If the British Government introduces a large navy bill into Parliament, members will ask, does this bill conform to the spirit of the pact? If the Government of the United States should land troops in Nicaragua, public opinion will ask, does this intervention conform to the spirit of the pact? Legal arguments upon these points may be made. But whatever the result of these arguments may be, the moral fact of the existence of the pact may constitute an overpowering obstacle to any peace-time policy which disturbs international friendship. Viewed from this standpoint, friends of the pact believe that it contains really immense possibilities.

76. Cf. a Foreign Office memorandum on British Relations with France and Germany, written in 1907 by Eyre Crowe, who later became the permanent head of the British Foreign Office *British Documents on the Origins of the War*, Vol. III, (1928), p. 397.

## LIST OF STATES ADHERING TO THE PACT

The following countries have officially adhered to the general pact for the renunciation of war:

Peru
Liberia
Rumania
Russia
Cuba
Bolivia

States which have not signified their intention to adhere:

Iceland
Argentina
Brazil
Paraguay
Ecuador
Colombia
Chile
Afghanistan

The following countries have signified their intention to adhere to the general pact for the renunciation of war:

Denmark
Austria
Luxemburg
Netherlands
Switzerland
Panama
Uruguay
Costa Rica
Dominican Republic
Jugoslavia
Finland
Latvia
Haiti
Egypt
Portugal
Sweden
Ethiopia
Venezuela
Estonia
Honduras
Bulgaria
Greece
Guatemala
Nicaragua
Lithuania
Turkey
Albania
China
Spain
Mexico
Norway
Siam
Salvador
Persia
Hungary